



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 2196 OF 2008
IN THE ESTATE OF BARTHOLOMEW WARUI (DECEASED)

R U L I N G

1. The application for determination is dated 30th March 2012. It is brought at the instance of Augustine Njoroge Kamau, one of the administrators of the estate of the deceased. It seeks for an order that the Executive Officer of the court be authorized to sign transfer forms relating to Chania/Makwa/789 on behalf of Stephen Kimani and Gabriel Mburu. The application is founded on the ground that after confirmation of the grant the respondents had declined to sign the relevant forms to facilitate distribution of the estate.
2. There is a reply to the application, comprised in the affidavit sworn on 16th April 2015 by Gabriel Mburu Kamau. He contends that the applicant has not indicated the forms that he is alleged to have declined to sign. In any event he says the relevant Land Control Board rejected the application for the distribution of the deceased's estate as there was no plan of the partition.
3. Both parties appeared before me on 21st April 2015 and orally presented their arguments for and against the application.
4. The deceased herein died on 24th March 2002. Representation to his estate was sought and obtained in Thika CMCS No. 274 of 2004. A grant of letters of administration intestate was made and issued on 29th December 2004 by the Senior Resident Magistrate at Thika. The said grant was confirmed on 5th October 2005 and a certificate to that effect of even date duly issued.
5. On 18th September 2008 a summons under section 76 of the Law of Succession Act, Cap 160 Laws of Kenya, dated 17th September 2008, was duly lodged at the High Court in this cause seeking the revocation of the grant made on 29th December 2004. The said application was brought by Margaret Wanjiku Kibicho on behalf of alleged survivors of the deceased who had allegedly been concealed from the court by the administrators.
6. The revocation application was responded to by one of the administrators, Gabriel Mburu Kamau, through an affidavit sworn on 10th February 2009, asserting that the alleged survivors of the deceased were not children of the deceased. There is an affidavit too sworn on 25th February 2009 by Stephen Kimani Kamau to the same effect.

7. On 3rd February 2010, Margaret Wanjiku Kibicho lodged an affidavit in the cause, sworn on 22nd April 2009, in which she denounces the application dated 17th September 2008. She states that the contents of the affidavit drawn in support of the application were not read over to her before she appended her signature. She states her wish to withdraw the application as she does not wish to be named as applicant in the said application.

8. Directions on the disposal of the said application were given on 3rd February 2010. It was to be heard by reliance on the affidavits filed to be highlighted if necessary.

9. The application has not been disposed of to date, neither have further directions been taken given the contents of the affidavit of Margaret Wanjiku Kibicho filed, in court on 3rd February 2010.

10. This court is seized only of the revocation application. The substantive matter is still the preserve of the Thika court where the cause was initially lodged. Indeed, I have noted that although this court did on 23rd March 2009 order the Deputy Registrar to call for the file in respect of Thika CM CSC No. 274 of 2004 to be availed, that file has never been availed to date. What was forwarded from the lower court was another file being Thika CM CSC No. 270 of 2004 relating to the estate of another person, Monicah Mirae (deceased).

11. Even if the lower court file had been availed, it would not be proper to deal with the application dated 30th March 2012 before the fate of the application dated has been determined, for the filing of a summons for revocation of grant has the effect of holding everything else in abeyance to await the outcome of the revocation application.

12. In the circumstances, the application before me is premature. It should have been filed only after the fate of the revocation application had been determined, but only in Thika CM CSC No. 274 of 2004. I shall dismiss it with no orders as to costs.

13. In the meantime, I direct the Deputy Registrar to summon Margaret Wanjiku Kibicho to attend court to indicate whether she still intends to prosecute the application dated 17th September 2008 in view of her affidavit filed herein on 3rd February 2010. Matter to be mentioned on a date to be given at the delivery of the ruling for the appearance of Margaret Wanjiku Kibicho.

DATED, SIGNED and DELIVERED at NAIROBI this 5TH DAY OF FEBRUARY, 2016.

W MUSYOKA

JUDGE

In the presence ofadvocate for the applicant.